



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Chapter III

Statutory Amendments Affecting Transportation of Agricultural Commodities and Farm Supplies

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notification of statutory exemptions.

SUMMARY: FMCSA alerts motor carriers and enforcement officials of two statutory exemptions included in the MAP-21 transportation reauthorization legislation that are applicable to certain motor carriers engaged in the transportation of agricultural commodities and farm supplies. Section 32101 of MAP-21 provides a statutory exemption from the hours-of-service regulations for certain carriers transporting agricultural commodities and farm supplies and section 32934 provides a statutory exemption from most of the Federal Motor Carrier Safety Regulations for the operation of covered farm vehicles by farm and ranch operators, their employees, and certain other specified individuals under certain specific circumstances. The statutory provisions are self-executing and take effect on October 1, 2012. This notice is intended to ensure that enforcement officials and the motor carriers are aware of the statutory provisions. The Agency will, at a later date, conform the FMCSRs to the statutory provisions.

DATES: The legislative provisions are effective October 1, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas L. Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations; 1200 New Jersey Ave. SE., Washington, DC 20590, Telephone 202-366-4325, E-mail: MCPSD@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

On July 6, 2012, the President signed into law “Moving Ahead for Progress in the 21st Century Act” (MAP-21) (Pub. L. 112-141, 126 Stat. 405). MAP-21 included two provisions applicable to the operation of commercial motor vehicles (CMVs) for agricultural purposes. They are section 32101(d), “Transportation of Agricultural Commodities and Farm Supplies,” and section 32934, “Exemptions from Requirements for Covered Farm Vehicles.”

Section 32101(d) of MAP-21

Section 32101(d) of MAP-21 amends section 229(a)(1) of the Motor Carrier Safety Improvement Act of 1999 [49 U.S.C. 31136 (note)] which provides a statutory exemption from the Federal hours-of-service (HOS) rules for commercial motor vehicle (CMV) drivers engaged in the transportation of agricultural commodities and farm supplies.

FMCSA’s previous guidance on its HOS regulations stated that the NHS Act agricultural operations exemption applies to the transportation of farm supplies from the local farm retailer to the ultimate consumer within a 100 air-mile radius. FMCSA’s interpretation, however, had not extended the HOS exemption to deliveries from wholesalers located at port or terminal facilities to either local farm retailers or farms. (See Question 33, 49 CFR 395.1 on the Agency’s website: www.fmcsa.dot.gov.)

Question 33 reads as follows:

Question 33: How is “point of origin” defined for the purpose of §395.1(k)?

Guidance: The term “point of origin” is not used in the NHS Designation Act; the statutory term is “source of the [agricultural] commodities.” The exemption created by the Act applies to two types of transportation. The first type is transportation from the source of the agricultural commodity - where the product is grown or raised - to a location within a 100 air-mile radius of the source. The second type is transportation from a retail distribution point of the farm supply to a location (farm or other location where the farm supply product would be used) within a 100 air-mile radius of the retail distribution point.

The legislative history of the agricultural exemption indicates it was intended to only apply to retail store deliveries. Thus, it is clear Congress intended to limit this exemption to retail distributors of farm supplies.

Second-stage movements, such as grain hauled from an elevator (or sugar beets from a cold storage facility) to a processing plant, are more likely to fall outside the exempt radius. Similarly, the exemption does not apply to a wholesaler’s transportation of an agricultural chemical to a local cooperative because this is not a retail delivery to an ultimate consumer, even if it is within the 100 air-mile radius.

In consideration of the new statutory exemption, FMCSA withdraws the above guidance. And through the publication of this notice and distribution of information to

the enforcement community, the Agency will ensure the full implementation of the MAP-21 statutory exemption on October 1, 2012.

In addition, the Agency announces that its 2-year, limited exemption from the Federal HOS regulations for certain carriers engaged in the transportation of anhydrous ammonia, granted on October 6, 2010 (75 FR 61626), is no longer needed and will not be renewed. The 2-year limited exemption covered the transportation of anhydrous ammonia from any distribution point to a local farm retailer or the ultimate consumer, and from a local farm retailer to the ultimate consumer, as long as the transportation takes place within a 100 air-mile radius of the retail or wholesale distribution point. The MAP-21 statutory exemption addresses the needs of the carriers covered by the 2010 exemption notice.

Impact of Section 32101(d) on the States

The statutory amendment does not, in and of itself, require any actions by the States, at this time. However, FMCSA requests that States immediately take action to put into place policies and procedures to provide the regulatory relief provided by section 32101(d) of MAP-21. The Agency will amend the FMCSRs to reflect the language in section 32101(d) and the States will be required as a condition of receiving Motor Carrier Safety Assistance Program (MCSAP) funding, to adopt and enforce compatible safety regulations.

MCSAP is a Federal grant program that provides financial assistance to States to reduce the number and severity of crashes and hazardous materials incidents involving CMVs. The goal of the MCSAP is to reduce CMV-involved crashes, fatalities, and injuries through consistent, uniform, and effective CMV safety programs. The MCSAP

rules (49 CFR Part 350) include conditions for participation by States and local jurisdictions and promote the adoption and uniform enforcement of safety rules, regulations and standards compatible with the FMCSRs and Federal Hazardous Materials Regulations (HMRs) for both interstate and intrastate motor carriers and drivers.

States are required by 49 CFR 350.331 to amend their laws and regulations within three years after the effective date of any newly enacted regulation or amendment to the FMCSRs or HMRs. While this notice is not a rulemaking action amending the FMCSRs, FMCSA requests that States immediately take action to put into place policies and procedures to provide the regulatory relief provided by MAP-21, and to follow-up with the appropriate amendments to their laws and regulations to reflect the statutory exemption in section 32101(d). FMCSA will issue, at a later date, a final rule to amend the FMCSRs to reflect this MAP-21 provision. The effective date of that rule would begin the three-year period during which the States must adopt compatible regulations to remain eligible for MCSAP funding.

Section 32934 of MAP-21

Section 32934 of MAP-21 provides a statutory exemption from most of the FMCSRs, including those pertaining to commercial driver's licenses (CDL) and driver physical qualifications (medical) requirements, for the operation of covered farm vehicles by farm and ranch operators, their employees, and certain other specified individuals under specific circumstances.

The Agency notes the scope of the statutory exemption provided by section 32934 is broad and its applicability may be difficult to determine. The Agency will work with

the enforcement community and motor carriers to provide clarification, as needed, to ensure the statutory exemption is implemented as intended by Congress. The statute provides relief from:

- 49 CFR Part 383: Commercial Driver’s License Standards; Requirements and Penalties
- 49 CFR Part 382: Controlled Substances and Alcohol Use and Testing
- 49 CFR Part 391, Subpart E: Physical Qualifications and Examinations
- 49 CFR Part 395: Hours of Service
- 49 CFR Part 396: Inspection, Repair and Maintenance

Which CMVs are Considered Covered Farm Vehicles?

With regard to covered farm vehicles, the statute lists several criteria, including a requirement that the vehicles be “equipped with a special license plate or other designation by the State in which the vehicle is registered to allow for identification of the vehicle as a farm vehicle by law enforcement personnel.” This statutory provision explicitly excludes farm vehicles transporting hazardous materials in quantities requiring placards. Therefore, the absence of a “special license plate or other designation by the State in which the vehicle is registered,” or the presence of hazardous materials in a quantity requiring placards are straightforward indicators that the farm vehicle in question is not covered by the statutory exemption. The other criteria require more in-depth consideration by motor carriers and enforcement officials to determine the applicability of the exemption. The other criteria for identifying a “covered farm vehicle” are located at section 32934 of MAP-21

The statutory definition of covered farm vehicles may include vehicles described above that are (1) operated pursuant to a crop share farm lease agreement; (2) owned by a tenant with respect to that agreement; and (3) transporting the landlord's portion of the crops under that agreement. However, section 32934 is not applicable to the operation of farm vehicles by for-hire motor carriers.

Relationship Between Section 32934 of MAP-21 and 49 CFR 383.3

With regard to the CDL requirements, FMCSA notes that certain drivers in the agricultural industry who are not covered by the MAP-21 provision, based on the statutory definition of "covered farm vehicle," may be covered by an existing regulatory exemption from the CDL requirements. As the Agency concluded in its August 15, 2011 (76 FR 50433) notice concerning the applicability of the FMCSRs to operators of certain farm vehicles, Under 49 CFR 383.3(d), the States are allowed, at their discretion, to provide relief from the CDL requirements under certain specific circumstances. The regulatory relief under section 383.3(d)(1)(iii) excludes drivers working for commercial common or contract carriers. However, it covers drivers transporting both the farmer's and the landlord's crops under a crop share agreement, even if the sharecropper is specifically compensated for performing the transportation, as the Agency made clear in its notice of August 15, 2011 (76 FR 50433). In other words, the CDL exemption is equally available to (1) farmers who own their land and haul their crops to market; (2) farmers who rent their land for cash and haul their crops to market; and (3) farmers who rent their land for a share of the crops and haul their own and the landlord's crops to market. These farmers continue to be eligible for the CDL exemption if a State elects to provide the exemption.

Impact of Section 32934 on the States

The section 32934 provision of MAP-21 includes language concerning the impact of the statutory exemption on the States' eligibility for Federal transportation funding to ensure that States are not penalized for providing regulatory relief consistent with the statutory exemption. The statute states that "Federal transportation funding to a State may not be terminated, limited, or otherwise interfered with as a result of the State exempting a covered farm vehicle, including the individual operating that vehicle, from any State requirement relating to the operation of that vehicle."

In its simplest terms, the statute makes it clear that States adopting compatible regulations concerning motor carriers and drivers operating covered farm vehicles in intrastate commerce must not be penalized through the withholding of Federal transportation funding, specifically grants associated with the FMCSA's (MCSAP) and highway construction grants that could be withheld from States for substantial non-compliance with the CDL.

As indicated previously in this notice, States are required by 49 CFR 350.331 to amend their laws and regulations within three years after the effective date of any newly enacted regulation or amendment to the FMCSRs or HMRs. While this notice is not a rulemaking action amending the FMCSRs, FMCSA requests that States immediately take action to put into place policies and procedures to provide the regulatory relief provided by MAP-21, and to follow-up with the appropriate amendments to their laws and regulations to reflect the statutory exemption in section 32934. FMCSA will issue, at a later date, a final rule to amend the FMCSRs to reflect this MAP-21 provision. The

effective date of that rule would begin the three-year period during which the States must adopt compatible regulations to remain eligible for MCSAP funding.

As far as the impact of section 32934 on States' CDL programs, the statute makes clear that the U.S. Department of Transportation must not withhold Federal-aid highway funds from a State because the State provided exceptions or exemptions from its CDL requirements when that relief is compatible with the language in MAP-21. Therefore, such exceptions or exemptions will not be considered substantial non-compliance, and section 384.301, *Withholding of funds based on noncompliance*, would not be applicable in these circumstances.

Future Action

The Agency intends to conform the FMCSRs to the statutory provisions. This notice is intended to ensure that all interested parties are aware of these self-executing provisions of MAP-21 in the interim.

Issued on: September 26, 2012

Anne S. Ferro
Administrator

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